

## Summary of PCHB Appeal Issues and How Addressed in Amended 401

PCHB Conditions from 8/12/02	Ecology Appeal	Port Appeal	WA Supreme Court	How Addressed in Amended 401
1. Enhanced treatment BMPs			Affirmed	Added PCHB language to J.2.d
2. Sample SW above and below outfalls			Affirmed	Added PCHB language to J.2.g
3. WET testing for injury as well as mortality			Affirmed	Added PCHB language to J.2.h
4. 100% retrofit of SW facility required			Affirmed	Added PCHB language to J.1.c
5. Use of WER study limited	X	X	Overturned	No change necessary
6. 1 CFS mitigation for Des Moines Creek		X	Overturned	No change necessary
7. New fill criteria established by PCHB	X	X	Overturned, but required Ecology to recalculate values for selenium and silver, TPH set at zero	No change to majority of language, recalculated Selenium and silver, TPH set at 0, see E.1.b)—table with new values for selenium and silver, and footnotes. Also amended Excel table that goes with Attachment E.
8. Prohibition on use of SPLP	X	X	Overturned, but required that SPLP results be compared to both surface and groundwater criteria.	Added language to E.1b) and to Attachment E to require comparison of SPLP test results with both surface and groundwater quality criteria.
9. Increased number of fill samples			Affirmed	Changed E.1.a)iv) to require number of samples required by MTCA (deleted previous table)
10. Match pre-project hydro periods of wetlands			Affirmed	Added PCHB language to D.1.g)
11. 2:1 on-site mitigation ratio		X	Affirmed but	No change necessary to 401.

			struck language limiting offsite mitigation	Have adequate mitigation with Auburn site per Supreme Court.
12. If decrease in delineation, more in-basin mit.			Affirmed	Added PCHB language to D.1.h)
13. Seepage monitoring: Ecology <i>shall</i> take action to eliminate exceedences of water quality standards		X	Affirmed	Added PCHB language to E.3
14. Monitoring for Fill and Preferred pathways shall continue for at least 8 years			Affirmed	Added PCHB language to B.1.c) and d)
15. Monitoring for as long as there are contaminates in the AOMA			Affirmed	Added PCHB language to B.1.c) and d)
16. Water right required for low flow vaults		X	Overtured	No change necessary